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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,651	01/03/2002	Kurt F. Fischer	TRW (AP) 6017	6536
26294	7590	11/10/2003	EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 526 SUPERIOR AVENUE, SUITE 1111 CLEVEVLAND, OH 44114			FLEMING, FAYE M	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

<b>Office Action Summary</b>	<b>Application No.</b> 10/037,651	<b>Applicant(s)</b> FISCHER ET AL.	
	<b>Examiner</b> Faye Fleming	<b>Art Unit</b> 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: the phrase "...located over and past the head the vehicle occupant...". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-10 are rejected under 35 U.S.C. 101 because the claim language is improper; the applicant cannot claim the occupant's head. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Higuchi, et al (6,474,686).

Higuchi, et al discloses an inflatable vehicle occupant protection device 48 wherein the device has a stored, deflated condition, and an inflated condition; an inflator 50; a flap made of fabric material 51 wherein the flap is attached to the protection device 48 and is stored with the device; the flap is deployed by inflation of the protection device into a position engaging and protects the head of a vehicle occupant. With respect to the flap located over and past the head of the vehicle occupant is relative because the occupant could be of any size. In an inflated condition the protection device has a rearward-facing outer surface portion that is closest to the vehicle occupant and the flap extends along the rearward-facing outer surface portion of the device. Higuchi, et al teaches a housing in which the protection device 48 in the deflated condition and the flap are stored. In a deflated condition the protection device 48 is stored in the housing and the flap is folded with the protection device. The flap has opposite end portions, including a first end portion that is fastened to the protection device and a second end portion wherein the second end portion of the flap is spaced farther from the inflator than the first end portion when the protection device is inflated, as shown in figures. Higuchi, et al teaches an instrument panel 4 having an upper portion extending generally rearward in the vehicle from the vehicle windshield; a deployment opening facing generally upward and rearward in the vehicle and having a forward edge portion and a rearward edge portion; and the flap 51 extends from the rearward edge portion of

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the deployment opening in an inflated condition, as shown in figures 1 and 9. With respect to claims 6 and 7, Higuchi, et al teaches the protection device stored in the deflated condition wherein the flap is folded separately and/or with the protection device, as shown in figures 11 and 12.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higuchi, et al (6,474,686) in view of Kawaguchi, et al (4,772,045).

Higuchi, et al teaches the claimed invention except for the first major side surface of the flap having a higher coefficient. Kawaguchi teaches the flap formed from a chamois skin, it is old and well known in the art that material formed of chamois skin is made of a hide which is a soft texture on a first side and of a rough texture on a second side wherein the hide has a higher coefficient of friction; further Kawaguchi, et al teaches the soft skin is on the side closer to the occupant, leaving the opposite side facing the protection device (see col. 2, lines 8-11). Based on the teachings of Kawaguchi, et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the side surface of the flap to protect the skin of the occupant.

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***Allowable Subject Matter***

8. Claims 9 and 10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Notice of References Cited list references disclosing some features in common with the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Fleming whose telephone number is (703) 305-0209. The examiner can normally be reached on M-F (9:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Faye Fleming  
Examiner  
Art Unit 3616

*F. Fleming*  
11/03/03